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VIA HAND DELIVERY

July 27, 2001

Procurement Appeals Board
c/o Director
Division of Purchases and Supply
805 East Broad Street
Richmond, Virginia 23219

Re: Appeal by GTSI Corp. of the partial denial by the Department of Information Technology of GTSI Corp.'s protest of intended awards under Invitation For Bid #2001-04

Dear Ladies and Gentlemen:

GTSI Corp. ("GTSI"), 3901 Stonecroft Boulevard, Chantilly, Virginia, telephone (703) 502-2645, fax (703) 222-5217, hereby files this appeal of the partial denial by the Department of Information Technology (the "DIT") of GTSI Corp.'s protest of intended awards under Invitation For Bid #2001-04, as amended ("IFB").

I.
Timeliness

In accordance with the Code of Virginia and the Commonwealth of Virginia's Vendors Manual ("Vendors Manual"), this protest is timely filed within 10 days of the DIT's written decision denying GTSI's protest in part. By letter dated July 17, 2001, the DIT notified GTSI of the DIT's decision to deny GTSI's protest in part. This protest is timely filed on the tenth calendar day following such notice.

II.

Interested Party

In accordance with the Code of Virginia and the Vendors Manual, GTSI is an interested party entitled to maintain this protest. GTSI was an actual bidder whose direct economic interest would be affected by the DIT's decision to award or not to award contracts under the IFB.

III.

Suspension of Award and/or Contract Performance

This protest is timely filed under the Code of Virginia and the Vendors Manual. As such, pursuant to the Code of Virginia and the Vendors Manual, the DIT is not allowed to take any action to award contracts under the IFB until after resolution of this appeal.

IV.

Relevant Background

The DIT issued Invitation for Bid #2001-04 on March 28, 2001. See Attachment A. The original IFB was replaced in its entirety by amendment 1, issued on April 27, 2001. See Attachment B. The IFB solicits bids for "printers and related equipment/products, supplies and services." The procurement was to be conducted through the use of sealed bids, as authorized by Section 11.41 of the Code of Virginia.

Section 3.8 of the IFB states that "[b]ids shall be evaluated and the responsive and responsible bidder(s) offering the lowest price will be awarded a Contract." Section 2.2.2 sets forth the method for determining the lowest price. Section 2.2.2 provides that evaluation of the bidders prices will be based on comparison of an Evaluated Cost Average ("ECA")¹ by printer category.

¹ The IFB defines Evaluated Cost as the printer purchase price offered by the bidder, plus the cost of 5,000 pages of supplies (assuming 5% coverage per page for laser, 100 characters per page for impact and inkjet printers (5% of

Section 2.1 sets forth the 9 general categories of printers to be procured. Included within the 9 general categories are 31 subcategories. Section 2.1 also lists general requirements that must be met by printers offered under the IFB. The general requirements include a statement that “[a]ll print speeds indicated [in the IFB] are for ‘Best Quality, or NLQ, or Highest rated dpi²,’ min.”

Section 1.1 indicates the DIT’s intention that individual awards per printer [sub] category shall be separate and distinct brand families, in order to offer the Commonwealth the broadest possible choice of printer brands.

Throughout the bidding process, vendors submitted both written and verbal questions to the DIT.

Bids were due by 2:00 pm on May 22, 2001. Opening of the Bids occurred at or about 2:10 pm on May 22, 2001. On June 22, 2001, the DIT placed on its Web site a notice of intent to award contracts under the IFB and listed the intended awardees.

On July 2, 2001, GTSI timely filed a protest with the DIT. See Attachment C. The protest contested, among other things, (i) that certain printers exceeded the maximum specifications; (ii) that a substantial portion of the printers, including laser and inkjet printers, did not meet the minimum page per minute speed requirements at the printer’s applicable highest quality print mode; and (iii) that certain printers were discontinued prior to bid submission. GTSI also contested that certain printers did not meet the minimum dpi requirements, were part of the same brand family as other printers awarded in their subcategory, did not print color as required by the particular subcategory or included incorrect cost per page submissions.

2,000 characters per page)). The ECA is the average of the EC(s) for a particular bidder in a particular printer category.

On July 17, 2001, the DIT issued its decision regarding GTSI's protest. DIT's decision included a letter dated July 17, 2001 ("DIT's Response"). See Attachment D. DIT's decision also included an attachment in support of the letter ("DIT's Response Supplement"). See Attachment E. The DIT sustained in part and denied in part GTSI's protest.

V.
Grounds of Appeal

The goal of the Virginia legislature in enacting the Virginia Public Procurement Act, which is codified in the Code of Virginia, was to ensure that the "Commonwealth obtain quality goods and services at a reasonable cost, that all procurement procedures be conducted in a fair and impartial manner with avoidance of any impropriety or appearance of impropriety, that all qualified vendors have access to public business and that no offeror be arbitrarily or capriciously excluded, it is the intent of the General Assembly that competition be sought to the maximum feasible degree" BIT Processing, Inc. v. The Information Technology Procurement Appeals Board, 1994 WL 1031217 (Va. Cir. Ct., 1994); San Jose Construction Group, Inc. v. Loudoun County School Board, 1998 WL 957328 (Va. Cir. Ct., 1998). Black's Law Dictionary defines "arbitrary and capricious" as "a decision or action taken by an administrative agency or inferior court meaning willful and unreasonable action without consideration or in disregard of facts or law or without determining principle." Black's Law Dictionary 105 (6th ed. 1991).

A. The DIT arbitrarily and capriciously denied, in part, GTSI's protest that the DIT intends to award contracts for printers that do not comply with the maximum requirements of the IFB and are therefore non-responsive and not eligible for award.

The procurement at hand is for 31 separate subcategories of printers. Each subcategory contains a distinct set of requirements, as well as being subject to the general requirements set

² "dpi" stands for dots per inch.

forth in Section 2.1 of the IFB. Printers that do not meet all of the distinct set of requirements in the particular subcategory in which they are being offered and that do not meet the general requirements applicable to that subcategory are non-responsive under the IFB and are not eligible for award.

Section 3.8 of the Vendors Manual defines a responsive bidder as a bidder that “has submitted a bid which conforms in all material respect to the Invitation for Bids. Examples of non-responsiveness include . . . failure to offer a product or service that meets the requirement of the Invitation of Bids.”

1. The DIT denied GTSI’s protest regarding the DIT’s intent to award a contract for printers that do not comply with the maximum size specifications for labels.

GTSI appeals the DIT’s denial of its protest of the award to Starprint for the IBM 4400-004, 4400-006 and 4400-008 under subcategory D.2. Subcategory D.2 is for desktop label printers. The distinct requirement of the subcategory sets a not to exceed label size of 2.25”. The manufacturers specifications for the printers indicate the printers’ maximum label size is 8”, not 2.25”. The DIT denied GTSI’s protest claiming the language of the IFB, specifically #13 on Page S4 of the Amended IFB, permits printers to exceed specifications. The DIT’s claims are unreasonable, inconsistent with the DIT’s actions prior to bid submissions and contrary to the facts.

There are two basic types of specifications, minimums and maximums.³ A minimum requirement prevents bidders from offering products that are below the specification. A maximum specification prevents bidders from offering products that are above the specification. The IFB includes both minimum and maximum specifications. In fact, in its response to a

vendor question regarding the subcategory E.2.d requirements of “300 dpi, above 50 ppm, 8.5” x 11” up to 12” x 18.5”” the DIT states:

[t]his statement merely describes a range of paper sizes with an upper limit of 12” x 18.5”. As long as a printer can meet the other specs (dpi & speed) and print on paper size of 8.5” x 11”, it meets spec. If a printer can print on larger than 12” x 18.5”, it would not qualify for award in this category. The [new] spec actually expands the range in the original bid, which had an upper limit of 11” x 17”.

Vendor Questions & Answers – May 7, 2001 (emphasis added). See Attachment F. This answer clearly shows that prior to bid opening the DIT recognized that exceeding a maximum specification would make a printer ineligible for award. However, after opening the bids the DIT has changed its answer and now claims that exceeding maximum specifications is acceptable.

Why have a maximum specification? Maximum specifications can, among other things, help the Commonwealth avoid paying for functionality it does not require or meet other requirements. For instance, if the DIT sought mobility in a printer and included a maximum specification that printers weigh no more than 40 pounds so that they could be moved easily, would a printer that exceeded the specification and weighed 60 pounds be acceptable? Of course not, but under the rationale asserted by the DIT the printer would be acceptable. The DIT’s reliance on #13 on Page S4 of the Amended IFB would be appropriate for minimum specifications, but is clearly unreasonable and a misapplication of the facts to maximum specifications.

B. The DIT arbitrarily and capriciously denied, in part, GTSI’s protest that the DIT intends to award contracts for printers that do not comply with the minimum requirements of the IFB and are therefore non-responsive and not eligible for award.

The procurement at hand is for 31 separate subcategories of printers. Each subcategory contains a distinct set of requirements, as well as being subject to the general requirements set

³ Another possible type of specification is an “exact” specification (e.g. exactly 50 ppm), but this is not discussed due to the lack of relevancy and to avoid convoluting the issue.

forth in Section 2.1 of the IFB. Printers that do not meet all of the distinct set of requirements in the particular subcategory in which they are being offered and that do not meet the general requirements applicable to that subcategory are non-responsive under the IFB and are not eligible for award.

Section 3.8 of the Commonwealth of Virginia's Vendors Manual defines a responsive bidder as a bidder that "has submitted a bid which conforms in all material respect to the Invitation for Bids. Examples of non-responsiveness include . . . failure to offer a product or service that meets the requirement of the Invitation of Bids."

1. The DIT denied GTSI's protest regarding the DIT's intent to award contracts for printers that do not comply with the minimum page per minute requirement of the IFB and are therefore non-responsive and not eligible for award.

GTSI appeals the denial by the DIT of GTSI's protest regarding the following intended printer awards:

Subcategory	Company Name	Printer Brand
E.1.a	DISYS	Okidata 8z
E.1.a	Minolta	Minolta 1100
E.1.a	Logicom	Xerox P8EX
E.1.b	Logicom	Xerox P1210
E.2.a	Brother	Brother HL 1650
E.2.a	Lexmark	Lexmark T610N, M410N and M412N
E.2.b	Brother	Brother HL 2460
E.2.c	Lexmark	Lexmark T616N, W810N and W810Dn

This issue deals with a fairly straightforward question, does the IFB require laser printers to print the required pages per minute while printing at the printer's "Highest rated dpi" or does the IFB require laser printers to print the pages per minute at or better than "NLQ"?

Twenty of the 31 subcategories of the IFB require printers to print a minimum number of pages per minute at their "Best Quality, or NLQ, or Highest rated dpi, min." The phrase "Best Quality, or NLQ, or Highest rated dpi" is understood throughout the IT industry as indicating the highest print quality (referred to as "highest quality print mode" in this document) available for the given type of printer (i.e. laser, dot matrix, inkjet). As discussed below, the individual terms best quality, NLQ and highest rated dpi are applicable only to certain types of printers.

Manufacturers often list the page per minute capabilities of their printers in terms of maximums (i.e. "up to 10 ppm" or "10 ppm"). It is understood throughout the IT industry, is dictated by logic and eluded to by the DIT (See DIT's Response, Page 2, Section 1) that the maximum number of pages per minute of a printer is at its lowest available print quality and that printing at the highest print quality will produce fewer pages per minute.

GTSI protested the DIT's intent to award contracts for printers that do not meet the minimum page per minute requirements at the printers "highest quality print mode." (See Article V, Section A1 of the Protest.) The DIT responded to GTSI's protest by claiming that the printers "must be capable of meeting the specified page output speed when operating within a range of quality that [the DIT] considered adequate." (See DIT's Response, Page 2, Section 1.) The DIT further identifies the "range of quality" as the IFB requirement that "[a]ll print speeds indicated [in the IFB] are for 'Best Quality, or NLQ, or Highest rated dpi.'" (See DIT's Response Supplement, Section A1.)

The DIT denied GTSI's protest of laser printers that do not meet the page per minute requirements of the IFB at the printers "highest quality print mode." The DIT stated "[t]he Commonwealth does not agree that [laser printers are] required to meet the print speed requirement 'at its best quality mode.' NLQ is acceptable. Response to vendor questions on April 25, 2001 indicated, in regards to laser/page printers that 'there is no minimum dpi requirement.'" (See DIT's Response Supplement, Sections A1d, A1e, A1f, A1g and A1h.) (Emphasis Added).

The DIT claims that the same "range of quality" concept was intended to apply to inkjet printers, but the DIT inadvertently stated in response to a bidder's question that the inkjet family of printers must achieve the rated speed at its highest dpi. As a result, the DIT upheld GTSI's protest of certain inkjet printers and has canceled all awards under category C and all awards in subcategories H.1.a, H.1.b, H.2.a and H.2.c.

- a. The DIT's denial of GTSI's protest regarding laser printers failing to print the required pages per minute at their highest quality print mode is arbitrary and capricious.**

The DIT's assertion that the IFB does not require laser printers to print the required pages per minute at their highest quality print mode is unreasonable, inconsistent with the facts and contrary to the DIT's actions.

1. The IFB includes three basic types of printers; inkjet, dot matrix and laser. In conjunction with the three basic types of printers, Section 2.1 of the IFB references three print qualities; Best Quality, NLQ and Highest Rated dpi. It is understood throughout the printer industry that the term "Best Quality" is used in connection with inkjet printers, that the term "NLQ" is used in connection with

dot matrix printers and the term “Highest Rated dpi” is used in connection with laser printers.⁴ See Attachment G.

2. The DIT alleges that the print qualities contained in the General Requirement of Section 2.1 of the IFB establish a range of acceptable print quality, with NLQ being the minimum print quality, for the required page per minute print speed. (See DIT’s Response, Page 2, Section 1). In its partial denial of GTSI’s protest, the DIT states, “in the case of some printers that print one line at a time rather than the whole page (dot matrix specifically), we recognized that page output rates are sometimes claimed based upon reducing print quality to unacceptable levels.” (See DIT’s Response, Page 2, Section 1). In denying GTSI’s protest of certain laser printer awards, the DIT stated, “[w]e did not require page output speed to be measured at the highest quality. We required that printers must be capable of meeting the specified page output speed when operating within a range of quality that we consider adequate. This could be designated ‘Best Quality, or NLQ or Highest rated dpi.’ Laser/Page printers, due to the technology employed, do not present the dot matrix problem of unacceptable text quality.” (See DIT’s Response, Page 3, Section 2.)

Why set a range, when the DIT claims all it was seeking was a minimum print quality of NLQ?⁵ If the DIT was simply seeking NLQ as a minimum, why

⁴ Dot Matrix printers typically print in a range from a Draft Mode to NLQ. Inkjet printers typically print in a range from a Draft Quality up to Best Quality, also sometimes referred to as Photo Quality. Laser printers typically list their print in terms of dpi (i.e. 1200 dpi) with the maximum print quality being the Highest rated dpi. NLQ is used solely in conjunction with dot matrix printers and is not applicable to laser printers. See Attachment G.

⁵ The DIT contends that exceeding the specifications do not make a bidder non-responsive. Therefore, even if a printer could exceed its “Best Quality” or its “Highest rated dpi” (which it couldn’t by use of the adjectives best and

include laser printers in the print speed/quality requirement in Section 2.1?⁶ By the DIT's own admission, laser printers do not have the same print quality issues of dot matrix printers. In fact, laser printers are incapable of printing below letter quality. See Attachment H. The answer is simple – the concept of an “adequate range of quality” is irrational and inapplicable to this procurement.

Furthermore, the “Best Quality, or NLQ, or Highest rated dpi, min.” requirement indicates that it is a minimum requirement. (Emphasis Added). The terms “Best Quality” and “Highest rated dpi” in and of themselves (i.e. “best” or “highest”) indicate the maximum possible printer quality. It would be irrational to write a specification indicating the minimum print quality that is acceptable is a range between NLQ up through the printer's maximum print quality; to do so makes the terms “Best Quality” and “Highest rated dpi” meaningless. The only rationale contextual interpretation is that, in accordance with industry terms, “Best Quality” is the minimum print quality for inkjet printers at the required pages per minute, “NLQ” is the minimum print quality for dot matrix printers at the required pages per minute and “Highest rated dpi” is the minimum print quality for laser printers at the required pages per minute.

3. Contradicting its argument that the “Best Quality, or NLQ, or Highest rated dpi, min.” IFB requirement was intended to establish a range of acceptable print quality, the DIT claims that no minimum dpi requirement exists for laser

highest), if the DIT's intent was to receive a minimum print quality of NLQ, there is no need to create a print quality range, with “Best Quality or Highest rated dpi” being the upper range. (DIT's Response, Page 3, Section 2)

⁶ Under Section 2.1 of the IFB, the 7th bullet reads: “All print speeds indicated are for ‘Best Quality, or NLQ, or Highest rated dpi’, min.” The laser printers in the IFB list required print speeds and are thus subject to the “Best Quality, or NLQ, or Highest rated dpi, min.” requirement.

printers. (See DIT's Response Supplement, Sections A1d, A1e, A1f, A1g and A1h.) The DIT's basis for this argument is its response to vendor questions dated April 17, 2001, where it indicated, "there are no minimum dpi requirements." (See Vendor Questions & Answers – April 17, 2001, Numbers 16, 20, 59, 60, 61, 62 and 63). Attachment I. This claim clearly fails when the facts are applied.

The initial IFB was issued on March 28, 2001 ("Original IFB"). The Original IFB did not require any resolution, dpi, NLQ, Best Quality, Highest rated dpi or any other industry term regarding print quality. (See Original IFB, specifically Section 2.1). Vendors posed questions regarding print quality due to the DIT's lack of guidance. In response to the questions posed by vendors regarding the Original IFB, the DIT indicated that there were no minimum dpi requirements. (See Vendor Questions & Answers – April 17, 2001, Numbers 16, 20, 59, 60, 61, 62 and 63). In question number 16, a vendor asked if the DIT would "consider adding additional specifications for minimum dpi?" To which the DIT responded, "No." However, on April 27, 2001, the DIT issued amendment 1 to the IFB ("Amended IFB"). As indicated in the DIT's cover letter to amendment 1, the amendment replaced "the IFB document in its entirety." The Amended IFB clearly rescinded the DIT's answer to question 16 and does include minimum print quality specifications in Section 2.1.

The vendor questions and the DIT's answers that the DIT relies upon to claim there are no minimum dpi requirements for laser printers were issued in connection with the Original IFB. At the time the answers were issued, the IFB (based upon the Original IFB) did not contain minimum dpi requirements.

However, the IFB was amended to include minimum dpi requirements. Just as the answer to question 16 is correct only when viewed in light of the fact it was created on April 17th and is not applicable to and is superseded by the Amended IFB, the questions and answers regarding minimum dpi requirements are correct only when they are applied to the Original IFB and become meaningless in light of the dpi requirements which are actually included in the Amended IFB.

It is disconcerting that within the documents provided to GTSI denying its protest, the DIT clearly claims that they have established a range of acceptable print quality, which by the terms of the General Requirements of Section 2.1 of the IFB would apply to all print speeds indicated in the IFB, but then in the same protest denial claim that there is no minimum print quality requirements for laser printers when printing the required pages per minute.

4. On or about May 14, 2001, Mike Kulikowski, GTSI's State and Local Program Manager, spoke with John Tackley, DIT's Information Technology Consultant. Mr. Kulikowski inquired as to whether he was interpreting the requirements of the IFB correctly. Specifically, whether it was the DIT's intent that all of the requirements for a particular printer category be accomplished at the same time, i.e. do the laser printers under category E.1.b need to print "1200 dpi, above 20 ppm, up to 30 ppm, 8.5" x 11" up to 11" x 14'", at the same time? Mr. Tackley responded in the affirmative, clearly indicating that the dpi requirement must be met at the required print speed. Mr. Tackley indicated later in the same conversation that printers would be disqualified if a bidder failed to include a

specification sheet indicating that the printer was capable of meeting the pages per minute speed while printing at the required dpi.

5. Another bidder protested, and the DIT sustained the protest, of the award of the HP 9000 laser printer to GTSI. The DIT requested information from GTSI regarding the HP 9000.⁷ The DIT verbally requested confirmation that the HP 9000 could print over 50 pages per minute at its highest quality print mode. GTSI worked with the printer's manufacturer, HP, to determine if the printer could print over 50 pages per minute. HP confirmed that the HP 9000 could print over 50 pages per minute, but was unsure at which print quality. After further testing, HP confirmed and GTSI forwarded the confirmation to the DIT, that the HP 9000 met the page per minute requirements at its highest quality print mode.

If there was no minimum dpi requirement for laser printers or if there was a minimum and the minimum was merely a range that had to be better than NLQ (both of which the DIT asserts), then why did the DIT request information from GTSI regarding the HP 9000's capability to print over 50 pages per minute at its highest quality print mode? Based upon this request for information, it is obvious that the DIT understood Section 2.1 as requiring all printers to meet their minimum page per minute requirements at the printer's highest quality print mode, be it "Best Quality" for inkjet printers, "NLQ" for dot matrix printers or "Highest rated dpi" for laser printers.

⁷ John Tackley of the DIT contacted various business personnel at GTSI, including Mike Kulikowski, GTSI's State and Local Program Manager.

It is clear from the foregoing that the DIT's claims are inconsistent with the facts, as well as with themselves. Asserting that the requirement "Best Quality, or NLQ, or Highest rated dpi, min." contained in Section 2.1 of the IFB created a range of acceptable print quality and then asserting that there were no minimum requirements for laser printers is clearly unreasonable and in disregard for the facts. The DIT asserts two claims which are contradictory; unfortunately, neither of the claims are rational and fly in the face of the facts.

GTSI submitted with its protest, documents indicating the protested laser printers did not meet the minimum pages per minutes at the printer's highest quality print mode. (See Exhibits to the Protest). Section 2.1 of the IFB requires that "all specifications shall be verifiable from spec sheets/literature provided with the bid offer." As stated in the protest, this appeal and acknowledged by the DIT, the maximum number of pages per minute listed by manufacturers is not at the printer's highest quality print mode. (See also Attachment J). In fact, the DIT indicated that when applying the page per minute requirement concurrently with the printer's highest quality print mode, they were unable to determine from the official manufacturers documentation whether the inkjet printers attained "the required page output speed at the highest dpi." (DIT's Response, Page 2, Section 1). Once the same concept and methodology is applied to the laser printers, it is virtually certain that the official manufacturers documentation will be equally insufficient for the laser printers.

VI.

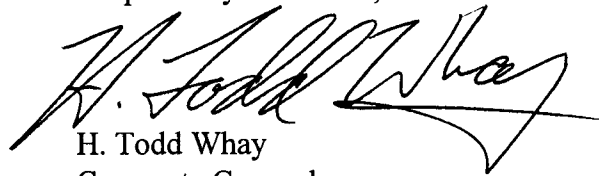
Request for Relief

In partially sustaining GTSI's protest, and the protests of other bidders, the DIT has eliminated 10 of 31 (nearly 33%) subcategories of the IFB, as well as 4 additional printers. After correctly applying the requirements of the IFB, the DIT will have to eliminate a substantial

portion of the intended awards for laser printer. Furthermore, the DIT has inconsistently and unreasonably applied and interpreted the requirements of the IFB. Based upon the foregoing, this procurement has been severely flawed. As such, GTSI requests the Procurement Appeals Board grant GTSI's appeal and declare:

1. the intended awards by the DIT and any actual awards by the DIT appealed herein are in violation of applicable law, regulations and the terms of the IFB and are not available for award; and
2. the IFB, and the intended awards there under, are canceled; and
3. such other and further relief as the Procurement Appeals Board deems to be just and proper.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "H. Todd Whay", with a large, sweeping flourish extending to the right.

H. Todd Whay
Corporate Counsel
GTSI Corp.